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Attorneys for Defendant
Google Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

The Authors Guild, Inc. et al.,

Plaintiffs,

v.
Google Inc.,

Defendant.

Civil Action No. 05 CV 8136 (DC)

**DEFENDANT GOOGLE INC.'S ANSWER TO
PLAINTIFFS' FOURTH AMENDED COMPLAINT**

Defendant Google Inc. ("Google") answers Plaintiffs' Complaint as follows:

NATURE OF THE ACTION

1. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Fourth Amended Complaint and therefore denies such allegations.

2. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Fourth Amended Complaint and therefore denies such allegations.

3. Google admits that it owns and operates an Internet search engine, that it has entered into agreements with several libraries (including those of the Universities of Michigan, Wisconsin, and California) to digitally scan and create a searchable index of the words in many books in their collections, and that it will retain a digital scan of such books. Google denies the remaining allegations in paragraph 2 of the Fourth Amended Complaint.

4. Google denies the allegations in paragraph 4 of the Fourth Amended Complaint.

5. Google denies the allegations in paragraph 5 of the Fourth Amended Complaint.

6. Google denies the allegations in paragraph 6 of the Fourth Amended Complaint.

7. Google admits that Plaintiffs have brought a purported class action seeking damages and injunctive and declaratory relief for alleged copyright infringement. Google denies the remaining allegations in paragraph 7 of the Fourth Amended Complaint.

JURISDICTION AND VENUE

8. Google admits that Plaintiffs purport to bring a copyright infringement action under 17 U.S.C. § 101, *et seq.*, and that such an action presents a federal question under 28 U.S.C. §§ 1331 and 1338.

9. Google admits that venue is proper in this district.

PARTIES

REPRESENTATIVE PLAINTIFFS

10. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Fourth Amended Complaint and therefore denies such allegations.

11. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Fourth Amended Complaint and therefore denies such allegations.

12. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Fourth Amended Complaint and therefore denies such allegations.

13. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Fourth Amended Complaint and therefore denies such allegations.

14. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Fourth Amended Complaint and therefore denies such allegations.

15. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Fourth Amended Complaint and therefore denies such allegations.

16. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Fourth Amended Complaint and therefore denies such allegations.

17. Google admits that it has not entered into any agreements with the Named Plaintiffs concerning the books listed in paragraphs 10 through 16 of the Fourth Amended Complaint. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 17 of the Fourth Amended Complaint and therefore denies such allegations.

ASSOCIATIONAL PLAINTIFF

18. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Fourth Amended Complaint and therefore denies such allegations.

19. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations that the member authors of the Authors Guild would have standing to sue Google for copyright infringement in their own right and that protection of authors' copyrights is germane to the purposes of the Author's Guild, and therefore denies such allegations. Google denies the remaining allegations in paragraph 19 of the Fourth Amended Complaint.

DEFENDANT

20. Google admits that it is a Delaware corporation with its principal place of business located in Mountain View, California, that it operates a large Internet search engine, and that it receives revenue from advertising.

21. Google admits that in 2004 it announced the launch of the Library Project, which is part of its Google Book Search (formerly known as Google Print) service. Google further admits that Google Book Search allows users to search an index of the words in books. Google denies the remaining allegations in paragraph 21 of the Fourth Amended Complaint.

CLASS ALLEGATIONS

22. Google admits that the Complaint purports to define a class as set forth in paragraph 22 of the Fourth Amended Complaint.

23. Google denies the allegations in paragraph 23 of the Fourth Amended Complaint.

24. Google denies the allegations in paragraph 24 of the Fourth Amended Complaint.

25. Google denies the allegations in paragraph 25 of the Fourth Amended Complaint.

26. Google denies the allegations in paragraph 26 of the Fourth Amended Complaint.

27. Google denies the allegations in paragraph 27 of the Fourth Amended Complaint.

28. Google denies the allegations in paragraph 28 of the Fourth Amended Complaint.

29. Google denies the allegations in paragraph 29 of the Fourth Amended Complaint.

GENERAL ALLEGATIONS

30. Google admits that it provides Internet search services to the public and derives the majority of its revenue from advertising. Google denies the remaining allegations in paragraph 30 of the Fourth Amended Complaint.

31. Google admits that on December 14, 2004, it issued a press release, which speaks for itself.

32. Google admits that it provides technology which is used in scanning library books. Google denies any remaining allegations in paragraph 32 of the Fourth Amended Complaint.

33. Google denies the allegations in paragraph 33 of the Fourth Amended Complaint.

34. Google admits that it has digitally scanned some Books from libraries. Google further admits that it has scanned some of the Books without obtaining the copyright holder's permission, but avers that such permission is not required. Google denies the remaining allegations in paragraph 34 of the Fourth Amended Complaint.

35. Google denies the allegations in paragraph 35 of the Fourth Amended Complaint.

36. Google denies the allegations in paragraph 36 of the Fourth Amended Complaint.

37. Google denies the allegations in paragraph 37 of the Fourth Amended Complaint.

38. Google denies the allegations in paragraph 38 of the Fourth Amended Complaint.

COUNT ONE - Copyright Infringement
(by Plaintiffs Mitgang, Hoffman, Dickson, Goulden and Bouton)

39. Google incorporates by reference its answers to paragraphs 1 through 38 above as if fully restated herein.

40. Google is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 40 of the Fourth Amended Complaint that the Named Plaintiffs and the Class own a valid copyright in and to at least one Work that has been scanned by Google, and therefore denies such allegation. Google denies the remaining allegations in paragraph 40 of the Fourth Amended Complaint.

41. Google admits that it has scanned some of the literary works contained in university libraries and from other sources, and that it intends to scan additional literary works in university libraries. Google denies the remaining allegations in paragraph 41 of the Fourth Amended Complaint.

42. Google denies the allegations in paragraph 42 of the Fourth Amended Complaint.

43. Google denies the allegations in paragraph 43 of the Fourth Amended Complaint.

44. Google denies the allegations in paragraph 44 of the Fourth Amended Complaint.

COUNT TWO - Injunctive Relief
(by All Plaintiffs)

45. Google incorporates by reference its answers to paragraphs 1 through 44 above as if fully restated herein.

46. Google admits that it has made digital scans of some of the works contained in the named libraries. Google denies the remaining allegations in paragraph 46 of the Fourth Amended Complaint.

47. Google denies the allegations in paragraph 47 of the Fourth Amended Complaint.

48. Google denies the allegations in paragraph 48 of the Fourth Amended Complaint.

49. Google denies the allegations in paragraph 49 of the Fourth Amended Complaint.

50. Google denies the allegations in paragraph 50 of the Fourth Amended Complaint.

51. Google denies the allegations in paragraph 51 of the Fourth Amended Complaint.

52. Google denies the allegations in paragraph 52 of the Fourth Amended Complaint.

**COUNT III - Declaratory Relief
(by All Plaintiffs)**

53. Google incorporates by reference its answers to paragraphs 1 through 52 above as if fully restated herein.

54. Google denies the allegations in paragraph 54 of the Fourth Amended Complaint.

55. Google denies the allegations in paragraph 55 of the Fourth Amended Complaint.

JURY DEMAND

Defendant Google Inc. demands a jury trial of all issues triable by jury under applicable law.

DEFENSES

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Court lacks jurisdiction over the subject matter of this action because Plaintiffs lack statutory and Article III standing to bring this action and/or because the case or controversy, if any ever existed, is now moot.

THIRD DEFENSE

Plaintiffs' claims and/or the remedies sought are barred by the First Amendment to the United States Constitution.

FOURTH DEFENSE

Plaintiffs' claims are unsuitable for class treatment pursuant to Federal Rule of Civil Procedure 23.

FIFTH DEFENSE

Google's use of and activities with respect to books that are subject to copyright are subject to one or more of the limitations on 17 U.S.C. § 106 set forth in 17 U.S.C. §§ 107-122.

SIXTH DEFENSE

Some or all of the Plaintiffs' claims are barred or subject to dismissal for failure to comply with renewal, notice, and registration requirements, and with other necessary formalities.

SEVENTH DEFENSE

Some or all of the copyrights on which Plaintiffs rely have been forfeited or abandoned.

EIGHTH DEFENSE

Some or all of Plaintiffs' works or portions thereof are not original.

NINTH DEFENSE

Some or all of Plaintiffs' works or portions thereof are in the public domain.

TENTH DEFENSE

Some or all of Plaintiffs' claims are barred by the merger doctrine.

ELEVENTH DEFENSE

Some or all of Plaintiffs' works or portions thereof constitute unprotectable ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries.

TWELFTH DEFENSE

Some or all of Plaintiffs' works or portions thereof constitute scenes a faire.

THIRTEENTH DEFENSE

Some or all of Plaintiffs' claims are barred because Plaintiffs have engaged in copyright misuse and have unclean hands.

FOURTEENTH DEFENSE

Some or all of Plaintiffs' claims or some or all of the relief sought for such claims are barred by the doctrines of waiver, estoppel, laches, or acquiescence.

FIFTEENTH DEFENSE

Google has a license to scan, copy, and/or display some or all of Plaintiffs' works or portions thereof.

SIXTEENTH DEFENSE

Some or all of Plaintiffs' claims are barred because Plaintiffs do not own the copyright and/or electronic rights for some or all of the works.

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WHEREFORE, Defendant Google Inc. respectfully prays the Court as follows:

1. That the Court dismiss the Complaint;
2. That the Court deny certification of the proposed class;
3. That Plaintiffs recover nothing of Google;
4. That the Court deny Plaintiffs' request for injunctive and declaratory relief;
5. That the costs of this action, including reasonable attorneys' fees, be taxed against Plaintiffs pursuant to 17 U.S.C. § 505 or other applicable law; and
6. That the Court grant Google such other and further relief as the Court deems just and proper.

Dated: June 14, 2012

Respectfully submitted,

By: */s/ Joseph C. Gratz*

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